

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

HELENA KRAMER

Plaintiff,

Case No. 3:10-cv-270

vs.

Judge Thomas M. Rose

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Magistrate Judge Michael R. Merz

Defendant.

**ENTRY AND ORDER OVERRULING THE COMMISSIONER'S
OBJECTIONS (Doc. #13) TO THE MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATIONS ; ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #12) IN ITS
ENTIRETY; AND REMANDING THIS MATTER TO THE
COMMISSIONER FOR ADDITIONAL ADMINISTRATIVE
PROCEEDINGS**

Plaintiff Helena Kramer ("Kramer") has brought this action pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of the Defendant Commissioner of Social Security (the "Commissioner") denying her application for Social Security disability benefits ("SSD") and supplemental security benefits ("SSI"). On March 28, 2011, United States Magistrate Judge Michael R. Merz entered a Report and Recommendations (doc. #12) recommending that this matter be remanded for further administrative proceedings (doc. #13). The Commissioner filed Objections (doc. #13) and Kramer responded to the Commissioner's Objections (doc. #14). This matter is, therefore, ripe for decision.

Kramer sought SSD and SSI benefits alleging disability from June 1, 2004. The

Commissioner denied this application initially and on reconsideration. An Administrative Law Judge (“ALJ”) then held a hearing following which he determined that Kramer was not disabled. The Appeals Council denied Kramer’s request for review and the ALJ’s decision became the Commissioner’s final decision. Kramer then filed an action in this Court seeking judicial review.

Based upon the reasoning and citations of authority set forth in the Magistrate Judge’s Report and Recommendations (doc. #12) and in the Commissioner’s Objections (doc. #13) and the Kramer’s Response (doc. #14), as well as upon a thorough de novo review of this Court’s file, including the Administrative Transcript, and a thorough review of the applicable law, this Court adopts the aforesaid Report and Recommendations in its entirety and, in so doing, remands this matter for further administrative proceedings. Finally, the Commissioner’s Objections to the Magistrate Judge’s Report and Recommendations are overruled.

This Court’s function is to determine whether the record as a whole contains substantial evidence to support the ALJ’s decision. *Bowen v. Commissioner of Social Security*, 478 F.3d 742, 745-46 (6th Cir. 2007). This court must also determine whether the ALJ applied the correct legal criteria. *Id.*

Regarding the substantial evidence requirement, the ALJ’s findings must be affirmed if they are supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971)(citing *Consolidated Edison Company v. NLRB*, 305 U.S. 197, 229 (1938)); *Landsaw v. Secretary of Health and Human Services*, 803 F.2d 211, 213 (6th Cir. 1986). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson*, *supra*, at 401; *Ellis v. Schweicker*, 739 F.2d 245, 248 (6th Cir. 1984). Substantial evidence is

more than a mere scintilla, but only so much as would be required to prevent a directed verdict (now judgment as a matter of law) against the ALJ/Commissioner if this case were being tried to a jury. *Foster v. Bowen*, 853 F.2d 483, 486 (6th Cir. 1988); *NLRB v. Columbian Enameling and Stamping Company*, 306 U.S. 292, 300 (1939).

The second judicial inquiry - reviewing the ALJ's legal criteria - may result in reversal even if the record contains substantial evidence supporting the ALJ's factual findings. *See Bowen*, 478 F.3d at 746. A reversal based on the ALJ's legal criteria may occur, for example, when the ALJ has failed to follow the Commissioner's "own regulations and where that error prejudices a claimant on the merits or deprives the claimant of a substantial right." *Bowen*, 478 F.3d at 746(citing in part *Wilson v. Commissioner of Social Security*, 378 F.3d 541, 546-47 (6th Cir. 2004)).

In this case, the ALJ's decision is not supported by substantial evidence. WHEREFORE, based upon the aforesaid, the Commissioner's Objections to the Magistrate Judge's Report and Recommendations (doc. #13) are OVERRULED, and this Court adopts the Report and Recommendations of the United States Magistrate Judge (doc. #12) in its entirety. This matter is remanded to the Commissioner for additional administrative proceedings. Finally, judgment is entered in favor of Kramer and against the Commissioner and the captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and **ORDERED** in Dayton, Ohio, this Third Day of May, 2011.

s/**Thomas M. Rose**

JUDGE THOMAS M. ROSE
UNITED STATES DISTRICT COURT

Copies furnished to: Counsel of Record